Supreme Court, U.S.
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No. 00-1464

In The

Supreme Court of the United States

PHELPS DODGE CORPORATION and
ARIZONA PUBLIC SERVICE COMPANY,

Petitioners,

v.

THE UNITED STATES, et al.,

Respondents.

**On Petition For Writ Of Certiorari
To The Supreme Court
Of The State Of Arizona**

RESPONSE OF ASARCO INCORPORATED IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Supreme Court of Arizona effect a taking of private property without just compensation in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, by declaring that there is " 'no legally recognized property right in potential, future groundwater use,' " when Arizona statutes and that court's prior decisions establish the existence of such a property right?

PARTIES TO THE PROCEEDINGS

Respondent ASARCO Incorporated ("ASARCO") supplements the Petition for Writ of Certiorari's description of the Parties to the Proceedings to add that it is a claimant in the adjudication below in the Maricopa County Superior Court concerning water rights in the Gila River System and Source. ASARCO filed claims for a variety of water rights in the Gila River Adjudication, including claims to Type 1 and Type 2 grandfathered groundwater rights recognized and defined under Arizona Revised Statutes ("A.R.S.") § 45-463 and § 45-464.[1]

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[1] ASARCO has lodged examples of its Statements of Claimant for Type 1 and Type 2 grandfathered groundwater rights with the Clerk of the Court, and respectfully asks this Court to take judicial notice of these documents. Lodging of Respondent ASARCO Incorporated, Exhibit A. ASARCO filed these Statements of Claimant with the Arizona Department of Water Resources pursuant to A.R.S. § 45-254. Filing of a statement of claimant is the mechanism by which water users assert water right claims in the Gila River Adjudication. ASARCO's Statements of Claimant constitute records of the Arizona Department of Water Resources, and are matters of record in the case below.

Courts may take judicial notice of the records and reports of administrative bodies. *See, e.g., Massachusetts v. Westcott*, 431 U.S. 322, 323 n.2 (1977); *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994); *cf.* Fed. Rule Evid. 201(b). Moreover, matters of record in the case are a proper subject for judicial notice. *See United States v. Rey*, 811 F.2d 1453, 1457 n.5 (11th Cir.), *cert. denied*, 484 U.S. 830 (1987). Accordingly, this Court may take judicial notice of the ASARCO's Statements of Claimant.

CORPORATE DISCLOSURE

ASARCO, a New Jersey corporation, is a wholly owned subsidiary of Grupo Mexico S.A. de C.V. This disclosure is made pursuant to Rule 29(6), Rules of the Supreme Court of the United States.

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RESPONDENT'S BRIEF IN SUPPORT

ASARCO respectfully responds in support of the Petition for Writ of Certiorari submitted by Phelps Dodge Corporation and Arizona Public Service Company ("Petition"). This response addresses the argument commencing at page 19 of the Petition. While the Petition poses a single "Question Presented" under which all of its arguments are subsumed, ASARCO sets forth a second "Question Presented" that articulates more precisely the issue on which this response focuses.

STATUTES INVOLVED

See Fifth and Fourteenth Amendments, Constitution of the United States; Arizona Revised Statutes § 45-401 *et seq.*

STATEMENT OF THE CASE

ASARCO adopts the Statement of the Case set forth in the Petition.

SUMMARY OF ARGUMENT

ASARCO files this response to address a single statement in Paragraph 47 of the opinion of the Supreme Court of the State of Arizona in *In re General Adjudication of All Rights to Use Water in the Gila River Sys. & Source*, 9 P.3d 1069 (Ariz. 2000) ("Opinion Below"). There the

Arizona Supreme Court declared that "landowners have 'no legally recognized property right in potential, future groundwater use.' " 9 P.3d at 1083. The court made no distinction between the continuation of existing groundwater uses into the future and the commencement of new groundwater uses in the future. In either case, the statement is contrary to Arizona law and a taking of property without just compensation.

Arizona statutes define the right to use groundwater. For those users or potential users coming within the statutes' terms, those rights include the right to continue existing groundwater uses into the future and the right to initiate new groundwater uses in the future. If taken literally, the Arizona Supreme Court's statement would extinguish property rights recognized and vested by statute. This in and of itself is a taking in violation of the Fifth and Fourteenth Amendments.

Moreover, the Opinion Below directly contradicts prior decisions of the Arizona Supreme Court recognizing the existence of a vested property right in future groundwater use. These decisions induced extensive reliance on groundwater by Arizona's municipal water providers, industries and farms over many years. The court cannot simply rule this property out of existence without triggering the just compensation guaranty of the Constitution of the United States.

ARGUMENT

I. Arizona Statutes Recognize That Future Groundwater Use Is A Vested Property Right.

Arizona statutes recognize a vested property right[2] in the potential, future use of groundwater. The Legislature enacted the Groundwater Management Act in 1980 ("Act"). 1980 Ariz. Sess. Laws 4th Spec. Sess., Ch. 1; *see also, Town of Chino Valley v. City of Prescott*, 638 P.2d 1324 (Ariz. 1981) ("*Chino Valley II*"). The Act "may well be the most ambitious legislation ever enacted by the Arizona Legislature and the most comprehensive water code in the United States." *Cortaro Water Users' Ass'n v. Steiner*, 714 P.2d 836, 838 (Ariz. App. 1985), *approved on this ground and rev'd on other grounds*, 714 P.2d 807, 808 (Ariz. 1986) (footnote omitted).

The Act imposes different rules governing the use of groundwater depending upon whether the water is withdrawn from wells within areas designated as active management areas or irrigation non-expansion areas, or from those areas not so designated. The Act most closely regulates the use of groundwater within active management areas. It allows the withdrawal of water from wells equipped with small capacity pumps, subject to certain restrictions. A.R.S. § 45-454. The Act also directs that a

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[2] The Arizona Supreme Court defined a "vested right" as one that "is actually assertable as a legal cause of action or defense or is so substantially relied upon that retroactive divestiture would be manifestly unjust." *San Carlos Apache Tribe v. Superior Court*, 972 P.2d 179, 189 (Ariz. 1999).

person engaged in or proposing to engage in the extraction and processing of minerals "shall be issued" a dewatering permit for the beneficial use of the land for mineral extraction, for metallurgical processing and for compliance with applicable environmental controls, A.R.S. § 45-513(A), and a permit to withdraw groundwater in the required amount if the statutory conditions are satisfied. A.R.S. § 45-514(A).[3] Such a person may recover water from beneath tailings ponds without a permit. A.R.S. § 45-513(B).[4] The director of the Arizona Department of Water Resources "shall issue" a permit to withdraw groundwater for general industrial use under defined circumstances. A.R.S. § 45-515(A). A city, town or private water company "shall have the right to withdraw and transport groundwater within its service area for the benefit of landowners and residents within its service area, and the landowners and residents are entitled to use the groundwater delivered" under the terms specified. A.R.S. § 45-492(A). An Arizona court has recognized that

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[3] These statutes ensure that within active management areas, the right of the mineral estate owner to use that amount of water necessary for the exploitation of minerals would remain intact. This right is an incident of mineral ownership. *Russell v. Texas Co.*, 238 F.2d 636, 644 (9th Cir. 1956), *cert. denied*, 354 U.S. 938 (1957); *Unit Petroleum Co. v. Oklahoma Water Resources Bd.*, 898 P.2d 1275, 1277-78 (Okla. 1995); *Ricks Exploration Co. v. Oklahoma Water Resources Bd.*, 695 P.2d 498, 503-05 & nn.19 & 25 (Okla. 1984); *Sun Oil Co. v. Whitaker*, 483 S.W.2d 808, 810-11 (Tex. 1972); 4 E. Kuntz, *A Treatise on the Law of Oil and Gas* § 50.2(b) at 275 (1990). This right to water derives from a legal regime outside traditional water law.

[4] A.R.S. § 45-513(B) was added in 1985. *See* 1985 Ariz. Sess. Laws 1st Reg. Sess., Ch. 323, § 7.

this statute created a "right." *Cortaro*, 714 P.2d at 838, 839. None of the entitlements created by these statutes presumes a preexisting use of groundwater.

There can be no serious doubt that if the director of the Arizona Department of Water Resources refused to issue a permit as required by the statutes cited above or contested groundwater use sanctioned by those statutes, the groundwater user could assert the statutes as a basis for a cause of action or defense. Under the standard articulated by the Arizona Supreme Court, these statutes create vested property rights. *See* n. 2 above.

The Act recognized and "grandfathered" groundwater uses existing in an active management area on the date the active management area was created:

> In an active management area, a person who was legally withdrawing and using groundwater as of the date of the designation of the active management area or who owns land legally entitled to be irrigated with groundwater as determined pursuant to this article *has the right to withdraw or receive and use groundwater* as determined by the director pursuant to this article.

A.R.S. § 45-462(A) (emphasis added). The rights associated with these existing uses are classified as Type 1 non-irrigation grandfathered rights associated with retired irrigated land, A.R.S. § 45-463; Type 2 non-irrigation grandfathered rights not associated with retired irrigated land, A.R.S. § 45-464; and irrigation grandfathered rights, A.R.S § 45-465. These grandfathered rights entitle the holder to use groundwater now and in the future. The Type 2 grandfathered groundwater right is especially

flexible because it is not appurtenant to particular land. A.R.S. § 45-464. It can be leased, A.R.S. § 45-464(G), or sold, A.R.S. § 45-474, subject to certain restrictions. There is no statutory provision for abandonment or forfeiture of Type 2 rights, so their future vitality does not depend on their current use. Type 2 rights authorize the use of substantial amounts of groundwater in Arizona's active management areas.[5]

For those parts of the state not designated active management areas or irrigation non-expansion areas, the Groundwater Management Act codified the doctrine of reasonable use, A.R.S. § 45-453, a doctrine previously adopted by the Arizona courts. *See, e.g., Bristor v. Cheatham*, 255 P.2d 173, 178-179 (Ariz. 1953). Section 45-453(1)

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[5] Type 2 grandfathered groundwater rights permit the use of more than 200,000 acre feet of groundwater per year. *See* Second Management Plan (1990-2000) for Phoenix Active Management Area at 169 (100,717 acre feet per year of Type 2 rights); Second Management Plan (1990-2000) for Pinal Active Management Area at 149 (10,998 acre feet per year of Type 2 rights); Second Management Plan (1990-2000) for Tucson Active Management Area at 139 (91,374 acre feet per year of Type 2 rights); and Second Management Plan (1990-2000) for Prescott Active Management Area at 112 (3,935 acre feet per year of Type 2 rights). ASARCO has lodged excerpts of these Management Plans with the Clerk of this Court and respectfully asks this Court to take judicial notice of these documents. Lodging of Respondent ASARCO Incorporated, Exhibit B.

The Arizona Department of Water Resources prepared these Management Plans at the Legislature's direction. A.R.S. § 45-563. As explained in note 1 above, courts may take judicial notice of the records and reports of administrative bodies. Accordingly, this Court may take judicial notice of the Management Plans.

permits the withdrawal and use of groundwater "for reasonable and beneficial use" subject to restrictions on the transportation of groundwater. This authorization is not limited to those who already are using groundwater or who already own a well.

Arizona statutes therefore create vested rights both to continue existing groundwater uses and to commence groundwater uses in the future so long as those uses comply with statutory requirements.

II. The Opinion Below, Taken Literally, Would Revoke Statutory Property Rights and Effect a Taking in Violation of The Fifth and Fourteenth Amendments.

The Fifth Amendment, made applicable to the States through the Fourteenth Amendment, *Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 239 (1897), provides that "private property" shall not "be taken for public use, without just compensation." Because the Constitution protects rather than creates property interests, the existence of a property interest is determined by reference to "existing rules or understandings that stem from an independent source such as state law." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972).

This Court has acknowledged that state courts are subject to the prohibition against uncompensated takings, as is any other branch of state government. *See Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 163-164 (1980) ("Neither the Florida Legislature by statute, nor the Florida courts by judicial decree, may accomplish the result the county seeks simply by recharacterizing the

principal as 'public money' because it is held temporarily by the court."); *Hughes v. Washington*, 389 U.S. 290, 296-297 (1967) (Stewart, J., concurring) (Justice Stewart's concurrence in *Hughes* was later cited with approval in *Bonelli Cattle Co. v. Arizona*, 414 U.S. 313, 331 (1973), *overruled on other grounds, Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co.*, 429 U.S. 363 (1977).).

Other federal courts[6] have overturned state court actions that resulted in property rights being taken without just compensation. In *Washington Legal Foundation v. Legal Foundation of Washington*, 236 F.3d 1097 (9th Cir. 2001), the court found that the interest generated by IOLTA pooled trust accounts was the property of the clients whose money was deposited into trust, and that the state court's appropriation of that interest for public purposes was a taking entitling these clients to just compensation under the Fifth Amendment. 236 F.3d at 1115. In *Robinson v. Ariyoshi*, 441 F. Supp. 559, 585 (D. Haw. 1977), *aff'd in part, vacated in part*, 753 F.2d 1468, 1475 (9th

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[6] In still other instances, federal courts have agreed that a judicial decision can take property without compensation, but have held that there was no taking on the facts presented, or declined to hear the dispute on jurisdictional grounds. *Cherry v. Steiner*, 716 F.2d 687, 692 (9th Cir. 1983) (no unpredictable change in the law), *cert. denied*, 466 U.S. 931 (1984); *Reynolds v. State of Georgia*, 640 F.2d 702, 705 (5th Cir.) (holding no jurisdiction in lower federal courts to review the constitutionality of state decisions), *cert. denied*, 454 U.S. 865 (1981).

Cir. 1985),[7] the district court held that a Hawaii Supreme Court opinion had unconstitutionally deprived property owners of their water rights by radically changing prior Hawaiian water law. Likewise, in *Sotomura v. County of Hawaii*, 460 F. Supp. 473, 482-483 (D. Haw. 1978), a district court held that a decision of the Hawaii Supreme Court had unconstitutionally changed the line dividing private and public beach amounting to a taking of private property.

The Arizona Supreme Court itself declined to alter the rule of law governing a landowner's right to withdraw and use groundwater out of concern for impairment of a vested property right. In *Bristor, supra*, the court stated:

> [D]eparture [from the common law doctrine of reasonable use] is not permitted for the reason that we might think the rule to be fallacious and anomalous. Whether we should for any other reason, after approximately fifty years' operation under an announced rule, depart therefrom depends upon many questions, the most important of which is the protection of property rights acquired upon the faith of this court's announcement of law.

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[7] This Court vacated the judgment in *Robinson* and remanded for further consideration in light of its decision in *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985). On remand, the Court of Appeals held that the constitutional challenge was premature because the plaintiffs had not exhausted their administrative remedies. *See Robinson v. Ariyoshi*, 887 F.2d 215 (9th Cir. 1989).

. . . .

> It is generally so well known that we take judicial notice that, with faith in the foregoing declaration and assurance of this court, many and large investments have been made in the development of ground waters. Under these circumstances the court's announcement of the rule becomes a rule of property, and rights acquired thereunder should not be disturbed "unless the law is such as to leave the court no alternative," [citation omitted]; and when a decision does become a rule of property, the rights acquired thereunder are entitled to protection under the law as declared.

255 P.2d at 175. The court refused to abandon the doctrine of reasonable use as the rule governing groundwater use. *Id.* at 177.

The Arizona court was not alone in recognizing the need to protect vested property rights. The Michigan Supreme Court, in *Bott v. Commission of Natural Resources*, 327 N.W.2d 838 (Mich. 1982), reversed imposition of a new test for determining whether waters were navigable, in part because of the "unfairness of eliminating a property right without compensation." 327 N.W.2d at 849. The *Bott* court acknowledged that past judicial decisions establishing "rules of property" induce extensive reliance. *Id.*

> The justification for this rule is not to be found in rigid fidelity to precedent, but conscience. The judiciary must accept responsibility for its actions. Judicial "rules of property" create value, and the passage of time induces a belief in their stability that generates commitments of human energy and capital.

> The proposed changes in law would not have a purely theoretical effect. . . .

Id.

The Arizona Supreme Court effected a taking of vested rights to groundwater in the Opinion Below. With the sweeping statement challenged here, the court appears to extinguish statutory rights to future groundwater use previously discussed. Courts may interpret a statute or declare it unconstitutional, but the Arizona Supreme Court did neither in making the statement challenged here. It cannot simply rule that valid, statute-based property interests no longer exist.

III. The Opinion Below, Read Literally, Would Effect A Taking Of Vested Rights Recognized In Prior Judicial Decisions.

Arizona courts have long-recognized that the right to future groundwater use is a vested property right. Prior to the adoption of the Groundwater Management Act, the Arizona Supreme Court held that a landowner's right to withdraw and use groundwater is a property right entitled to protection:

> At the outset it must be conceded that the interests which petitioners seek to protect are property rights. We recognized in *Farmers Investment Company v. Bettwy, supra* [558 P.2d 14 (Ariz. 1976)], that the doctrine of reasonable use as judicially determined in Arizona had become a rule of property and was entitled to protection as such.

Town of Chino Valley v. State Land Dept., 580 P.2d 704, 709 (Ariz. 1978) ("*Chino Valley I*").

Similar declarations are found in other Arizona Supreme Court decisions both before and after *Chino Valley I*. *See, e.g., Bristor*, 255 P.2d at 175; *Jarvis v. State Land Dept.*, 479 P.2d 169, 172-73 (Ariz. 1970), *modified on other grounds*, 550 P.2d 227 (Ariz. 1976). In *Jarvis*, the court observed that "[t]he right to exhaust the common supply by transporting water for use off the lands from which they are pumped is a rule of law controlled by the doctrine of reasonable use and protected by the constitution of the state as a right in property." 479 P.2d at 172-73.

The Arizona Supreme Court further acknowledged that having recognized property rights to groundwater use, it must preserve these rights. In *Chino Valley II*, the court quoted from *Bristor* and *Jarvis* and declared:

> The statements in *Bristor* and *Jarvis* do not mean that rights to the use of groundwaters cannot be modified prospectively by the Legislature. They only mean that courts will adhere to an announced rule to protect *rights acquired under it* and that if any change in the law is necessary, it should be made by the Legislature.

638 P.2d at 1327 (emphasis added).

Until the pronouncement challenged in this response, the court below was reticent to change existing law where, as here, "the prospective effect of change threatens important vested rights and may affect every Arizonan's well-being." *In re General Adjudication of All Rights to Use Water in Gila River Sys. & Source*, 857 P.2d

1236, 1243 (Ariz. 1993). It concluded that any modification of the right to withdraw and use groundwater required an exercise of the police power. *Chino Valley II*, 638 P.2d at 1329-30. The police power resides with the legislative branch of Arizona government, not with its courts. *McKinley v. Reilly*, 393 P.2d 268, 270 (Ariz. 1964), *appeal dismissed*, 381 U.S. 276 (1965); *In re Creasy*, 12 P.3d 214, 219 (Ariz. 2000) (Martone, J., concurring).

A court "may change judge-made law" under certain circumstances, *In re General Adjudication of All Rights to Use Water in Gila River Sys. & Source*, 857 P.2d at 1243. By the Arizona Supreme Court's own admission, it may not do so when its own prior holdings have created a "rule of property." *Chino Valley I*, 580 P.2d at 709; *Chino Valley II*, 638 P.2d at 1327-1330.

The court's declaration that there is " 'no legally recognized property right in potential, future groundwater use' " appears to be a sudden and unpredictable change in law established by its own decisions, and is therefore a taking of property rights already existing under state law.

CONCLUSION

Based on the foregoing reasons, the Court should grant the writ.

Respectfully submitted,

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U.S. Const. Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in

Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Ariz. Rev. Stat. 45-254. Statement of claimant; filing; information to be included; verification; failure to file; fees

A. Each potential claimant who is served shall present in writing the particulars of his claim on the court-approved statement of claimant form and shall file the statement of claimant form with the court within ninety days of the date of service, unless otherwise ordered by the court. The court may extend the time for good cause. A duplicate of each statement of claimant shall be made available by the clerk of the court to the director.

B. The statement of claimant form may be filed by a person on behalf of its members or users and shall constitute the required filing of its members or users.

C. The statements of claimant shall include the following information, where appropriate:

1. The name and mailing address of the potential claimant.

2. The name of the specific river, stream, tributary, wash or other source from which the right to divert or make use of water is claimed.

3. The quantities of water and the periods of time during the year for which use is claimed.

4. If distributing works are used or required, the date of beginning and completion of construction or of enlargements and the dimensions of the ditch as originally constructed and as enlarged.

5. If the use is for irrigation, the amount of land reclaimed the first year and in subsequent years, and the

amount and general location of the land, the character of the soil and the kind of crops cultivated.

6. The legal description of the point or points of diversion and place of use of the waters to the nearest forty-acre tract or by other appropriate description and such map or plat showing the relative points of diversion and place of use as may be required.

7. The purpose and extent of use.

8. The time of the initiation of the right and the date when water was first used for beneficial purposes for the various amounts and times claimed in paragraph 3 of this subsection.

9. The legal basis for the claim.

D. The statement of claimant shall be verified by the claimant or the person authorized to file as provided in subsection B of this section.

E. After the date by which statements of claimant are required to be filed as set forth in the summons or in an order of the court, the filing of a statement of claimant or an amendment is permitted under the following circumstances:

1. At any time up to ninety days before the publication of the director's final report pursuant to section 45-256, subsection B for a subwatershed or federal reservation within the river system and source, a person may file a statement of claimant or an amendment to a statement of claimant with the director without leave of the court.

2. After the expiration of the ninety day period prescribed by paragraph 1 of this subsection and before the

conclusion of hearings by the master for a subwatershed or federal reservation within the river system and source, a person may assert a claim for a water use within the subwatershed or federal reservation without leave of the court by filing the original of the statement of claimant or amended statement of claimant with the director and a notice of filing with the court. After the conclusion of hearings on an existing claim, an amendment to that existing statement of claimant may only be permitted as prescribed by paragraph 3 of this subsection. If a statement of claimant or an amendment to a statement of claimant is filed after the expiration of the ninety day period and except as provided in section 45-258, other parties may object to the elements of the claim or amended claim.

3. After the master has completed hearings on a subwatershed or federal reservation within the river system and source and has filed a report with the court for the entire subwatershed or federal reservation pursuant to section 45-257, a person may not assert a late claim for a water right within that subwatershed or reservation as a matter of right. A person may request the court's permission to intervene in the adjudication and file a statement of claimant with the director. The court may grant the motion if it finds that the intervention would not unduly delay or prejudice the adjudication of the rights of the original parties. An amendment to an existing statement of claimant after the filing of the master's report for the entire subwatershed or federal reservation is permitted only by leave of the court in its discretion and on motion of the party seeking an amendment. Except as provided in section 45-258, other parties may object to the elements

of a claim or an amended claim filed pursuant to this paragraph.

F. On entry of the final decree pursuant to section 45-257, any potential claimant who is properly served and who failed to file a statement of claimant as prescribed by this article for any water right or whose motion for permissive intervention was finally denied by the court is barred and estopped from subsequently asserting any right that was previously acquired on the river system and source and that was not included in a statement of claimant and forfeits any rights to the use of water in the river system and source that were not included in a properly filed statement of claimant.

G. On the effective date of this amendment to this section, all statements of claimant previously filed in an adjudication pending under this article are deemed to be timely filed. An objection to the timeliness of any statement of claimant that was filed before the effective date of this section in an adjudication pending under this article is not permitted.

H. The fee for filing a statement of claimant by an individual is twenty dollars and by a corporation, municipal corporation, the state or any political subdivision, an association or partnership is two cents for every acre-foot of water claimed, or twenty dollars, whichever is greater. The director shall review the statements of claimant and the amount of fees paid as to each and report to the court or master the sufficiency of the fees paid with respect to each statement of claimant. A claim shall not be considered by the court or the master unless all fees with respect to such claim have been fully paid in accordance

with the provisions of this article. Fees shall not be imposed upon any Indian tribe, community or allottee personally appearing in the general adjudication to assert claims to water.

Ariz. Rev. Stat. 45-453. Groundwater rights and uses in areas outside active management areas; amounts; transportation; irrigation non-expansion areas

In areas outside of active management areas, a person may:

1. Withdraw and use groundwater for reasonable and beneficial use, except as provided in article 8.1 of this chapter.

2. Transport groundwater pursuant to articles 8 and 8.1 of this chapter.

3. Use groundwater for irrigation purposes within the exterior boundaries of an irrigation non-expansion area only pursuant to article 3 of this chapter.

Ariz. Rev. Stat. 45-454. Exemption of small non-irrigation wells; definitions

A. Withdrawals of groundwater for non-irrigation uses from wells having a pump with a maximum capacity of not more than thirty-five gallons per minute which were drilled before April 28, 1983 or which were drilled after April 28, 1983 pursuant to a notice of intention to drill

which was on file with the department on such date are exempt from the provisions of this chapter, except that:

1. Wells drilled before June 12, 1980 which are not abandoned or capped or wells which were not completed on June 12, 1980 but for which a notice of intention to drill was on file with the Arizona water commission on such date are subject to subsections F, G and H of this section and must be registered pursuant to section 45-593. If two or more wells in an active management area are exempt under this paragraph and are used to serve the same non-irrigation use at the same location, the aggregate quantity of groundwater withdrawn from the wells shall not exceed fifty-six acre-feet per year.

2. Wells drilled between June 12, 1980 and April 28, 1983, except as provided in paragraph 1 of this subsection, and wells drilled after April 28, 1983 pursuant to a notice of intention to drill which was on file with the department on April 28, 1983 are subject to subsections C, E, F and G of this section.

B. Withdrawals of groundwater for non-irrigation uses from wells having a pump with a maximum capacity of not more than thirty-five gallons per minute drilled on or after April 28, 1983, except wells drilled after April 28, 1983 pursuant to a notice of intention to drill which was on file with the department on such date, are exempt from the provisions of this chapter, except that:

1. Such wells are subject to subsections C through G of this section.

2. In an active management area, other than a subsequent active management area designated for a portion of

a groundwater basin in the regional aquifer systems of northern Arizona, withdrawals of groundwater from such wells for non-irrigation uses other than domestic purposes and stock watering shall not exceed ten acre-feet per year.

3. In a subsequent active management area that is designated for a portion of a groundwater basin in the regional aquifer systems of northern Arizona, groundwater withdrawn from such wells may be used only for domestic purposes and stock watering.

C. A person shall file a notice of intention to drill with the director pursuant to section 45-596 before drilling an exempt well or causing an exempt well to be drilled.

D. The registered well owner shall file a completion report pursuant to section 45-600, subsection B.

E. In an active management area only one exempt well may be drilled or used to serve the same non-irrigation use at the same location, except that a person may drill or use a second exempt well to serve the same non-irrigation use at the same location if the director determines that all of the following apply:

1. Because of its location, the first exempt well is not capable of consistently producing more than three gallons per minute of groundwater when equipped with a pump with a maximum capacity of thirty-five gallons per minute.

2. The second exempt well is located on the same parcel of land as the first exempt well, the parcel of land is at least one acre in size, all groundwater withdrawn from

both exempt wells is used on that parcel of land and there are no other exempt wells on that parcel of land.

3. Combined withdrawals from both wells do not exceed five acre-feet per year.

4. If the second exempt well is drilled after January 1, 2000, the county health authority for the county in which the well is located or any other local health authority that controls the installation of septic tanks or sewer systems in the county has approved the location of the well in writing after physically inspecting the well site.

5. Use of two wells for the same non-irrigation use at the same location is not contrary to the health and welfare of the public.

F. An exempt well is subject to sections 45-594 and 45-595.

G. Groundwater withdrawn from an exempt well may be transported only pursuant to the provisions of articles 8 and 8.1 of this chapter.

H. A person who owns land from which exempt withdrawals were being made as of the date of the designation of the active management area is not eligible for a certificate of grandfathered right for a type 2 non-irrigation use for such withdrawals.

I. In this section:

1. "Domestic purposes" means uses related to the supply, service and activities of households and private residences and includes the application of water to less than two acres of land to produce plants or parts of plants for

sale or human consumption, or for use as feed for livestock, range livestock or poultry, as such terms are defined in section 3-1201.

2. "Stock watering" means the watering of livestock, range livestock or poultry, as such terms are defined in section 3-1201.

Ariz. Rev. Stat. 45-462. Grandfathered groundwater rights; persons included; certificate of exemption amount is legal use

A. In an active management area, a person who was legally withdrawing and using groundwater as of the date of the designation of the active management area or who owns land legally entitled to be irrigated with groundwater as determined pursuant to this article has the right to withdraw or receive and use groundwater as determined by the director pursuant to this article.

B. For purposes of determining grandfathered rights pursuant to this article, a groundwater use shall not be determined to be illegal merely because the groundwater legally withdrawn is or has been transported.

C. The amount of groundwater use described by an application for a certificate of exemption is recognized as a legal use for purposes of determining grandfathered rights pursuant to section 45-464, subject to any modification as a result of a finding on appeal of a factual mistake by the state land department or Arizona water commission in computing the amount of the authorized withdrawal.

D. The right to withdraw or receive and use groundwater pursuant to this article is a grandfathered right. There are three categories of grandfathered rights as follows:

1. Non-irrigation grandfathered rights associated with retired irrigated land as determined pursuant to sections 45-463, 45-469 and 45-472.

2. Non-irrigation grandfathered rights not associated with retired irrigated land as determined pursuant to section 45-464.

3. Irrigation grandfathered rights as determined pursuant to section 45-465.

Ariz. Rev. Stat. 45-463. Type 1 non-irrigation grandfathered right associated with retired irrigated land; appurtenancy; ownership

A. In an initial active management area, a person who owns land which was legally entitled to be irrigated with groundwater and who retired such land from irrigation after January 1, 1965 but prior to the date of the designation of the active management area in anticipation of a non-irrigation use has the right to withdraw from or receive for such land three acre-feet of groundwater per acre per year upon showing that:

1. The land has been held under the same ownership since it was retired.

2. A development plan for the proposed non-irrigation use existed at the time the land was retired.

B. In a subsequent active management area, a person who owns land which was legally entitled to be irrigated with groundwater and retires such land from irrigation prior to the date of the designation of the active management area in anticipation of a non-irrigation use has the right to withdraw from or receive for such land the lesser of three acre-feet of groundwater per acre per year or the average annual amount of groundwater which was used per acre during the five years preceding the time the land was retired upon showing that:

1. The land has been held under the same ownership since it was retired.

2. A development plan for the proposed non-irrigation use existed at the time the land was retired and is filed with the director within ninety days after the active management area is designated.

C. The development plan requirements of this section are deemed fulfilled if the land retired from irrigation has been described in an application for a certificate of exemption or if the land retired from irrigation is owned in conjunction with non-irrigation uses existing or for which substantial capital commitments have been incurred for the non-irrigation development of such land as of the date of the designation of the active management area.

D. The right to withdraw or receive groundwater pursuant to this section is a non-irrigation grandfathered right associated with retired irrigated land, or a type 1 non-irrigation grandfathered right.

E. A type 1 non-irrigation grandfathered right is appurtenant to the acre of retired irrigated land associated with the right, is owned by the owner of the land to which the right is appurtenant and may be leased with the land.

F. At the request of a city or town in the Tucson active management area that holds a type 1 non-irrigation grandfathered right under subsection A of this section, the director, in determining whether to designate or redesignate the city or town as having an assured water supply pursuant to section 45-576, shall include four and one-half acre-feet of groundwater for each acre of retired irrigated land to which the right is appurtenant, multiplied by the number of years between the year of retirement and the year of the request, minus the quantity of groundwater withdrawn from the land between June 12, 1980 and the year of the request, except that:

1. No groundwater may be included for any acre of retired irrigated land for any year after the land is developed for any municipal or industrial use.

2. The amount of groundwater that is included under this subsection shall not exceed four and one-half acre-feet for each acre of retired irrigated land to which the right is appurtenant multiplied by the number of years between the year of retirement and December 31, 2025 minus the quantity of groundwater withdrawn from the land between June 12, 1980 and December 31, 2025.

3. The net amount of groundwater included under this subsection shall not exceed two million acre-feet.

4. The city or town, before making the request of the director, shall extinguish any irrigation grandfathered

rights or type 1 non-irrigation grandfathered rights held by the city or town and appurtenant to land acquired or contracted for by the city or town after June 12, 1980 in the same sub-basin.

G. In determining whether to designate a city or town as having an assured water supply pursuant to section 45-576, the director shall not consider the exercise of the right to withdraw groundwater under subsection F of this section to be the withdrawal of groundwater available from natural or artificial groundwater recharge.

Ariz. Rev. Stat. 45-464. Type 2 non-irrigation grandfathered right not associated with retired irrigated land; determination of amount; definition; ownership

A. In an active management area, a person who owns land from which groundwater was being legally withdrawn and used for a non-irrigation purpose as of the date of the designation of the active management area has the right to withdraw annually:

1. If the person holds a certificate of exemption, the greater of:

(a) The amount of groundwater established in proceedings on the application for certificate of exemption, subject to any modification as a result of a finding on appeal of a factual mistake by the state land department or Arizona water commission in computing the amount of the authorized withdrawal, less the amount of any right obtained by the person pursuant to section 45-463.

(b) The maximum amount of groundwater legally withdrawn from such land and used by the person in any one of the five years preceding the date of the designation of the active management area, less the amount of any right obtained by the person pursuant to section 45-463.

2. If the person does not hold a certificate of exemption, the maximum amount of groundwater legally withdrawn from such land and used by the person withdrawing the groundwater in any one of the five years preceding the date of the designation of the active management area, less the amount of any right obtained pursuant to section 45-463 by the person withdrawing groundwater from such land which has not been subtracted by the person withdrawing the groundwater in calculating the amount of another right pursuant to this section.

B. If the calculation in subsection A of this section results in an amount greater than zero, that amount is a grandfathered right in addition to any right obtained pursuant to section 45-463.

C. For the purposes of this section, "person" includes:

1. A city, town or private water company which owns land outside of the service area of such city, town or private water company from which groundwater was being legally withdrawn for a non-irrigation use as of the date of the designation of the active management area.

2. A city, town or private water company withdrawing groundwater from within its service area pursuant to a certificate of exemption.

3. Any other non-irrigation user.

D. If a person has been using groundwater for less than one year during the twelve months immediately preceding the date of the designation of the active management area, the amount of the grandfathered right pursuant to this section is the annual amount determined by the director to be reasonable for a full year to meet the requirements for a facility owned by such person in existence as of the date of the designation of the active management area.

E. If a person has received a certificate of environmental compatibility pursuant to title 40, chapter 2, article 6.2 for the construction of an electrical generating facility within a subsequent active management area for which expenditures or financial commitments for land acquisition, water development, materials, construction or engineering in excess of five hundred thousand dollars have been made before the date of the notice of the initiation of designation procedures or the call for the election for the area, the amount of the grandfathered right pursuant to this section is the annual amount determined by the director to be reasonable to meet the operational requirements for the facility for a full year.

F. The right to withdraw groundwater pursuant to this section is a non-irrigation grandfathered right not associated with retired irrigated land, or a type 2 non-irrigation grandfathered right.

G. A type 2 non-irrigation grandfathered right may be leased. Except as provided in subsection H of this section, the owner or lessee of a type 2 non-irrigation grandfathered right may withdraw groundwater pursuant to the right only from a location within the same active

management area in which the certificate of grandfathered right is issued.

H. Beginning July 1, 1994, the holder of a type 2 non-irrigation grandfathered right issued in the Tucson active management area prior to July 1, 1994, may withdraw groundwater pursuant to the right only from a location within the same active management area in which the well or wells listed on the certificate of grandfathered right on July 1, 1994, are located. If no well is listed on the certificate of grandfathered right on July 1, 1994, the holder of the right may withdraw groundwater pursuant to the right only from a location within the same active management area in which the land from which the originating withdrawals were made is located. For purposes of this subsection, the term "originating withdrawals" means the withdrawals of groundwater on which the issuance of a type 2 non-irrigation grandfathered right was based.

I. If the user of a type 2 non-irrigation grandfathered right is different from the owner of the right, either the owner, or the user of the right on behalf of the owner, may apply for a certificate of grandfathered right pursuant to section 45-476.

Ariz. Rev. Stat. 45-465. Irrigation grandfathered right; determination of acres entitled to and amount; appurtenancy

A. In an active management area, a person who owns land which was legally irrigated in whole or in part with

groundwater at any time during the five years preceding January 1, 1980 for initial active management areas or the date of the notice of the initiation of designation procedures or the call for the election for subsequent active management areas, which is capable of being irrigated and which has not been retired from irrigation for a non-irrigation use pursuant to section 45-463 or 45-469 has the right to use groundwater for the irrigation of such land as determined pursuant to subsection B of this section.

B. The director shall compute the maximum amount of groundwater which may be used pursuant to this section as follows:

1. Determine the farm units, as defined in section 45-402, within the active management area.

2. Determine the irrigation water duty, as defined in section 45-402, for each farm unit in an active management area, pursuant to sections 45-564 through 45-568.

3. Determine the water duty acres for each farm within the farm unit. The water duty acres are the highest number of acres in the farm, taking land rotation into account, which were legally irrigated during any one year in the five years preceding January 1, 1980 for initial active management areas or the date of the notice of the initiation of designation procedures or the call for the election for subsequent active management areas.

4. Determine the irrigation acres for each farm within the farm unit. The irrigation acres are the acres in the farm which were legally irrigated at any time during the five years preceding January 1, 1980 for initial active

management areas or the date of the notice of the initiation of designation procedures or the call for the election for subsequent active management areas, which are capable of being irrigated and which have not been retired from irrigation for a non-irrigation use pursuant to section 45-463 or 45-469.

5. Multiply the water duty acres for each farm within the farm unit by the irrigation water duty for the farm unit and divide that amount by the number of irrigation acres in the farm. The result shall be the maximum amount of groundwater which may be used per year for the irrigation of each irrigation acre in the farm. If the farm is located in an active management area other than the Santa Cruz active management area and is irrigated solely with groundwater, the amount of groundwater used by the farm for irrigation shall be accounted for pursuant to section 45-467, subsection C. If a farm is located in an active management area other than the Santa Cruz active management area and is irrigated with a combination of surface water and groundwater, the amount of groundwater used by the farm for irrigation shall be accounted for pursuant to section 45-467, subsection D. If a farm is located in the Santa Cruz active management area, the amount of water, other than stored water, withdrawn from a well and used by the farm for irrigation purposes shall be accounted for pursuant to section 45-467, subsection E or F.

C. The right to use groundwater pursuant to this section for the irrigation of an irrigation acre is an irrigation grandfathered right and is appurtenant to that acre. An irrigation grandfathered right is owned by the owner of

the land to which it is appurtenant and may be leased for an irrigation use with the land to which it is appurtenant.

D. A person who owns or leases irrigation acres may use the total amount of groundwater allowed by the irrigation grandfathered right for such acres for the irrigation of all or a portion of such acres.

E. If the irrigation water duty for the farm unit in which an irrigation acre is located is reduced by the director pursuant to article 9 of this chapter, the amount of groundwater which may be used for the irrigation of such acre pursuant to the irrigation grandfathered right under this section is reduced accordingly.

F. For purposes of this chapter, the amount of groundwater which may be used or is used is the amount of groundwater withdrawn by the groundwater user, measured at the point of withdrawal, and the amount of groundwater received by the groundwater user from an irrigation district or other source.

Ariz. Rev. Stat. 45-474. Conveyance of type 2 non-irrigation grandfathered right; amount

A. The owner of a type 2 non-irrigation grandfathered right may convey the right for any non-irrigation use, except that:

1. A type 2 non-irrigation grandfathered right that is used for purposes of mineral extraction or processing may be conveyed only for a mineral extraction or processing use.

2. A type 2 non-irrigation grandfathered right that is used for purposes of electrical energy generation may be conveyed only for an electrical energy generation use.

3. A type 2 non-irrigation grandfathered right in a subsequent active management area that is used for purposes of demonstrating and providing an assured water supply pursuant to section 45-576 in an initial active management area may be conveyed only for the same use and only with the approval of the director. The director shall not withhold approval of a conveyance under this paragraph if the right is no longer needed to provide the assured water supply that it was used to demonstrate.

B. A type 2 non-irrigation grandfathered right may not be conveyed for an irrigation use.

C. If a type 2 non-irrigation grandfathered right is conveyed, the full amount of the right is conveyed.

Ariz. Rev. Stat. 45-492. Withdrawals by cities, towns and private water companies within service areas; contract to supply groundwater

A. Except as provided in subsection D of this section, in an active management area, a city, town or private water company shall have the right to withdraw and transport groundwater within its service area for the benefit of landowners and residents within its service area, and the landowners and residents are entitled to use the groundwater delivered, subject to:

1. The provisions of articles 8 and 8.1 of this chapter relating to transportation of groundwater.

2. Conservation requirements developed by the director pursuant to article 9 of this chapter.

B. Claims of landowners to irrigation grandfathered rights or type 1 or 2 non-irrigation grandfathered rights shall be subject to the provisions of article 5 of this chapter.

C. A city, town or private water company may contract to supply groundwater to a city, town or private water company in the same active management area if it is consistent with the management plan for the active management area and section 45-576 and is approved by the director.

D. In an active management area, a city, town or private water company whose service area has qualified as a member service area under title 48, chapter 22, or as a water district member service area under title 48, chapter 28, has the right to withdraw and transport groundwater within its service area for the benefit of landowners and residents within its service area, and the landowners and residents are entitled to use the groundwater delivered, subject to the provisions of subsection A of this section and, to the extent the groundwater delivered is considered excess groundwater as defined and used in title 48, chapter 22 or 28, as applicable, subject to the payment by the city, town or private water company of the replenishment tax levied from time to time by a conservation district under title 48, chapter 22, or a water district under title 48, chapter 28, whichever is applicable. A city, town or private water company shall be deemed to have

failed to pay the replenishment tax only if the conservation district or the water district provides notice to the department of a delinquency in the payment of the replenishment tax pursuant to section 48-3781, subsection G or section 48-4982, subsection G, as applicable.

Ariz. Rev. Stat. 45-513. Dewatering permit; definition; priorities for use of groundwater; conditions on director; duration of permit

A. Except as provided in subsection F of this section, a person who is engaged in or proposes to engage in the extraction and processing of minerals shall be issued a dewatering permit for the beneficial use of the land for mineral extraction, for metallurgical processing and for compliance with applicable environmental controls. For purposes of this section, "dewatering" means the withdrawal of groundwater from pits, from in, under and around ore bodies in proximity to pits and from underground workings. Dewatering does not include process water and tailing water recovered from or pumped from beneath tailing ponds.

B. A person who is engaged in or proposes to engage in the extraction and processing of minerals may recover from or pump from beneath tailing ponds process water and tailing water without obtaining a permit under this article, if that water is recycled into the extraction or metallurgical process or is withdrawn to comply with applicable environmental controls. Such a person may not drill or cause to be drilled a well for the purpose of pumping or recovering process water or tailing water

from beneath tailing ponds for recycling into the extraction or metallurgical process without first filing a notice of intention to drill under section 45-596.

C. Groundwater withdrawn pursuant to a dewatering permit shall be used in the following order of priority:

1. To meet mineral extraction, metallurgical processing and environmental control requirements of the permittee.

2. To a city, town, private water company or farm and any other person whose respective ability to withdraw groundwater has been adversely affected by a dewatering permit. Such water shall be equitably allocated by the director without costs but subject to the conditions set forth in subsection D of this section among such persons adversely affected by such dewatering. A person who receives an allocation of water under this paragraph shall reduce his groundwater withdrawals by the amount of water he receives under this paragraph. A person receiving water under this paragraph does not thereby forfeit or abandon his right to withdraw groundwater.

3. For municipal, commercial, domestic and industrial needs of communities and residential areas directly related to the mineral extraction and metallurgical processing operation of the permittee.

4. To irrigate land owned or controlled by the permittee which is entitled to the use of groundwater for irrigation.

5. To the director for such distribution as will best achieve the goals and purposes of the management plan for the active management area.

6. For such other legal purpose as the permittee elects.

D. Groundwater made available to the director for distribution or allocation under this section is subject to the following conditions:

1. The permittee shall deliver the groundwater to the boundary of his property but shall not be obligated to deliver it further.

2. The permittee shall not be required to treat the chemical quality of the groundwater for distribution or allocation.

3. The permittee shall not be required to make the groundwater available if dewatering ceases, or if all or any portion of the groundwater is needed for a purpose having a higher priority as specified in subsection C of this section.

4. The person actually using the groundwater distributed or allocated by the director shall be responsible for paying any withdrawal fees required under section 45-611.

5. If the director sells water, proceeds shall be applied as follows:

(a) To cover costs, if any, of the director in delivering water to other users.

(b) To cover the permittee's cost in transporting water to the boundary of his property.

(c) To the active management area for general purposes as determined by the director.

E. A permit issued pursuant to this section shall be granted for a period of up to fifty years, subject to

renewal under the same criteria used in granting the original permit.

F. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to section 45-576.02, subsection A, paragraph 1, and except for an application to renew a dewatering permit, on receiving a permit application the director shall not issue a permit for a well in the district unless at the time the application for the permit is filed:

1. The director has determined that the district's plan for operation is consistent with achieving the management goal, according to section 45-576.03, subsection E, and the designation has not expired.

2. The master replenishment account, as established in section 45-858.01, does not have a debit balance in an amount in excess of the amount allowed under section 45-576.01, subsection A, paragraph 3.

Ariz. Rev. Stat. 45-514. Mineral extraction and metallurgical processing permit; conditions for issuance; duration of permit

A. Except as provided in subsection D of this section, a person who is engaged in or proposes to engage in the extraction and processing of minerals shall be issued a permit to withdraw groundwater in the required amount, if all of the following apply:

1. The amount of groundwater available for mineral extraction, metallurgical processing and compliance with applicable environmental controls under a dewatering permit is insufficient.

2. Uncommitted municipal and industrial central Arizona project water is not available at the point where the operator's wellhead or distribution system would otherwise be, at a cost which does not exceed the current municipal and industrial central Arizona project delivery rates.

3. Other surface water of adequate quality or effluent of adequate quality is not available at the point where the operator's wellhead or distribution system would otherwise be, at a cost, including treatment costs, which does not exceed by twenty-five per cent the cost the operator would otherwise incur in withdrawing groundwater.

4. The applicant does not own or lease type 2 nonirrigation grandfathered rights originally based on withdrawals of groundwater for the extraction or processing of minerals that the applicant is not using or leasing and that can be used at the proposed location without imposing an unreasonable economic burden on the applicant.

B. A permit issued pursuant to this section shall be granted for a period of up to fifty years, subject to renewal under the same criteria used in granting the original permit.

C. If, during the duration of a mineral extraction and metallurgical processing permit, the director determines

that uncommitted municipal and industrial central Arizona project water is available or surface water of adequate quality or effluent of adequate quality is available to the permittee at a cost comparable to groundwater, the director may require the permittee to use such water in lieu of groundwater.

D. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to section 45-576.02, subsection A, paragraph 1, and except for an application to renew a mineral extraction and metallurgical processing permit, on receiving a permit application the director shall not issue a permit for a well in the district unless at the time the application is filed:

1. The director has determined that the district's plan for operation is consistent with achieving the management goal, according to section 45-576.03, subsection E, and the designation has not expired.

2. The master replenishment account, as established in section 45-858.01, does not have a debit balance in an amount in excess of the amount allowed under section 45-576.01, subsection A, paragraph 3.

45-515.

Ariz. Rev. Stat. 45-515. General industrial use permits; conditions for issuance; duration of permit

A. Except as provided in subsection D of this section, the director shall issue a permit to withdraw groundwater from a point outside of the exterior boundaries of the service area of a city, town or private water company for a general industrial use outside of the exterior boundaries of such service area if the director determines that all of the following apply:

1. Uncommitted municipal and industrial central Arizona project water is not available at the point where the operator's wellhead or distribution system would otherwise be, at a cost which does not exceed the current municipal and industrial central Arizona project rates.

2. Other surface water of adequate quality or effluent of adequate quality is not available at the point where the operator's wellhead or distribution system would otherwise be, at a cost, including treatment costs, which does not exceed by twenty-five per cent the cost the operator would otherwise incur in withdrawing groundwater.

3. Irrigation grandfathered rights appurtenant to acres of land in reasonable proximity to the intended general industrial use are not available for purchase at a reasonable price or cannot be acquired by eminent domain and the applicant does not own or lease grandfathered rights that the applicant is not using or leasing, that may be used for the intended general industrial use and that can be used for the intended general industrial use without imposing an unreasonable economic burden on the applicant.

4. The intended general industrial use, if located within three miles of the exterior boundaries of the service area of a city, town or private water company, has been denied service by the city, town or private water company at the customary rate in the customary manner. The requirement of this paragraph does not apply to an expanded animal industry use.

5. The management plan for the active management area can be adjusted to accommodate the intended general industrial use consistent with the achievement of the management goal for the active management area.

6. There is an assured water supply for the intended use at the intended point of withdrawal. The director may waive this requirement if the director is unable to determine if there is an assured water supply because of hydrogeologic conditions underlying the point of withdrawal. For purposes of this section, "assured water supply" means that sufficient groundwater of adequate quality will be available to the applicant to satisfy the projected general industrial use for the duration of the permit.

7. If a new well or replacement well at a new location is to be constructed, a permit for the well has been issued pursuant to section 45-599.

B. A permit issued pursuant to this section shall be granted for a period of up to fifty years, subject to renewal under the same criteria used in granting the original permit.

C. If, during the life of the permit, the director determines that uncommitted municipal and industrial central

Arizona project water is available or other water or effluent of adequate quality is available at a cost comparable to groundwater, the director may require the permittee to use such water in lieu of groundwater.

D. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to section 45-576.02, subsection A, paragraph 1, and except for an application to renew a general industrial use permit, on receiving a permit application the director shall not issue a permit for a well in the district unless at the time the application is filed:

1. The director has determined that the district's plan for operation is consistent with achieving the management goal, according to section 45-576.03, subsection E, and the designation has not expired.

2. The master replenishment account, as established in section 45-676, does not have a debit balance in an amount in excess of the amount allowed under section 45-576.01, paragraph 3.

Ariz. Rev. Stat. 45-563. Management plans in active management areas; management periods; general provisions

A. The director shall develop a management plan for each initial active management area for each of five management periods pursuant to the guidelines prescribed in sections 45-564 through 45-568 and shall adopt the plans only after public hearings held pursuant to sections

45-570 and 45-571. The plans shall include a continuing mandatory conservation program for all persons withdrawing, distributing or receiving groundwater designed to achieve reductions in withdrawals of groundwater.

B. The director shall develop a management plan for the Santa Cruz active management area for the third, fourth and fifth management periods pursuant to the guidelines prescribed in sections 45-566, 45-566.01, 45-567, 45-567.01, 45-568 and 45-568.01 and shall adopt the plans only after public hearings held pursuant to sections 45-570 and 45-571. The plans shall include a continuing mandatory conservation program designed to achieve the management goal of the active management area for all persons withdrawing water, other than stored water, from a well and all persons distributing or receiving water, other than stored water, from a well. The plans shall also include criteria for the location of new wells and replacement wells in new locations consistent with the management goal of the active management area.